

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NOs.7555 OF 2011 AND 3028 OF 2012

DATED:25-6-2015

W.P. No.7555 of 2011

Between:

H. Narayana Dora ... Petitioner

And

The Registrar of Cooperative Societies &
Commissioner for Cooperation,
A.P., Gruhakalpa, Nampally,
Hyderabad
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mrs. Bobba Vijaya Lakshmi

COUNSEL FOR RESPONDENT NOs.1 and 2: A.G.P. for Civil Supplies (AP)

COUNSEL FOR RESPONDENT NO.3: Mr. A. Manohar

THE COURT MADE THE FOLLOWING:

COMMON ORDER:

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W.P. No.7555 of 2011 is filed for a Mandamus to set aside the proceedings in Rc.No.347/11-B, dt.14.3.2011, of respondent No.3 whereby he has directed respondent No.4 to file a criminal complaint against the petitioner.

W.P. No.3028 of 2012 is filed for a Mandamus to declare the action of respondent No.3 in conducting an inquiry and submitting the Report in Rc.No.532/2011B, dt.13.1.2012, and the consequential proceedings No.2719/2010-C, dt.23.1.2012 of respondent No.2, as illegal and arbitrary.

The petitioner in both these writ petitions is common. He was the Managing Director of respondent No.4 bank. The pleadings of the parties reveal that vide his proceedings in Rc.231/2005-C, dt.16.3.2005, respondent No.2 has ordered an inquiry under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act') and a report dt.4.1.2009 was submitted by the Inquiry Officer in respect of the affairs of the society for the period prior to the institution of the inquiry. By separate proceedings dt.28.2.2011 respondent No.2 has ordered another inquiry under Section 51 of the Act, into the affairs of respondent No.4 for the subsequent period. Accordingly, respondent No.3 (in W.P. 3028 of 2012) has conducted an inquiry and submitted his report dt.13.1.2012. Based on the said report, respondent No.3 has directed respondent No.4 to initiate prosecution against the petitioner. Feeling aggrieved by the said proceedings, the petitioner filed W.P. No.7555 of 2011. The petitioner has also filed W.P. No.3028 of 2012 for a Mandamus to declare the action of respondent No.2 in conducting inquiry and submitting the

report, dt.13.1.2012, and the consequential proceedings dt.23.1.2012 issued by respondent No.2 for placing the same before the Managing Committee, as illegal and arbitrary.

As regards W.P. No.7555 of 2011, this Court in *P. Satyanarayana v. The Registrar of Co-operative Societies & Commissioner for Co-operation, Hyderabad* (W.P. No.7676 of 2012, dt.18.3.2013) *inter alia* held as under:

In my opinion, before a penal action is sought to be taken, the person against whom such action is proposed must have had fair opportunity of putting forth his case. No doubt, in the inquiry under Section 51 of the Act, the employee may have an opportunity to participate in the inquiry and putforth his case. However, the report submitted by the Inquiry Officer is not in the nature of an order, but the same comprises his views based on the analysis of the evidence collected during the inquiry. The scheme of the Act does not envisage that such a report itself can be made a basis for proceeding against the persons indicted by the Inquiry Officer. Had that been the case, there would have been no need for a separate provision for fixing the liability on the indicted persons under Section 60 of the Act. Section 60, as noted above, envisages further opportunity to the persons who are named in the inquiry report, to putforth their case. I am therefore of the opinion that unless the proceedings under Section 60 of the Act are initiated and completed, the report submitted under Section 51 of the Act, cannot be made a basis for fixing the civil and criminal liabilities. I stand fortified in my opinion of this by the Judgments of this Court in V . Seshabrahmacharyulu Vs. The Divisional Co-operative Officer, Guntur (W.P. No.4563 of 2003, dt.3.4.2003) and Telangana Non-Gazetted Officers' Colony Welfare Association Vs. Pankaj Dwivedi (C.A. No.426 of 2012 in C.C. No.919 of 2011, dt.27.7.2012)"

The learned Assistant Government Pleader for Co-operation (AP) has not disputed the above legal position. In the light of the same, the impugned proceedings in W.P. No.7555 of 2011 are liable to be set aside for, so far no proceedings under Section 60 of the Act were initiated and no final order therein has been passed.

As regards W.P. No.3028 of 2012, I do not find any merit therein. It is not in dispute that the purpose for which the statutory inquiry was held is different. Once an inquiry under Section 51 of the Act is held and a report is submitted, the statutory procedure envisaged under the said provision has to be necessarily followed by placing the inquiry report before the General Body or Special General Body convened for

the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid.

In my opinion, no prejudice will be caused to the petitioner if the inquiry report is placed before the General Body under the said provision as it does not straightaway impose any liability on the petitioner. In the event the inquiry reported is accepted, the petitioner will be afforded an opportunity to defend himself in the inquiry to be held under Section 60 of the Act. In this view of the matter, W.P. No.3028 of 2012 is liable to be dismissed.

On the above analysis, W.P. No.7555 of 2011 is allowed and W.P. No.3028 of 2012 is dismissed, however, with liberty to the petitioner to raise all legally permissible grounds in the proceedings that may be initiated under Section 60 of the Act.

As a sequel to disposal of the writ petitions, W.V.M.P. No.3159 of 2011 and W.P.M.P. No.9400 of 2011 in W.P. No.7555 of 2011, and W.P.M.P. No.3805 of 2012 in W.P. No.3028 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

25-6-2015

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